

SPECIAL RESEARCH REPORT

THE ROLE OF CIVIL SOCIETY ORGANIZATIONS IN AFRICAN UNION'S DECISION-MAKING PROCESSES: AGENDA SETTERS, PARTICIPANTS, COLLABORATORS AND SHAPERS?

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I INTRODUCTION

The African Union (AU) recognizes at its founding the 'need to build a partnership between governments and all segments of civil society.'¹ Most significantly, one of the principles of the AU as enunciated in the Constitutive Act is 'participation of African peoples in the activities of the Union.'² These provisions constitute the normative foundation for the role of civil society organizations (CSOs) in the decision-making processes of the AU. As noted in the Amani Africa, Mapping of AU Decision-Making Actors and Processes, Special Report of April 2023, decision-making "refers to the 'how' and 'who' of the adoption of policies, laws, resolutions, regulations, recommendations and guidelines."³

Beyond the normative commitment, the AU reform process which began in 2016 underscored that connecting the AU with the African citizenry was one of the major areas calling for urgent action.⁴ The inclusion of CSOs in AU processes is a major avenue to harness citizens' voices, to connect the AU to African Citizens, and to ensure the realisation of AU's vision and mission for an integrated and prosperous Africa as outlined in Africa Agenda 2063. The inclusion of CSOs in decision-making processes of the AU makes the organisation 'more relevant and responsive to the real needs of citizens.'⁵ Thus, engagement of CSOs in AU decision-making processes is indispensable as it ensures the representation of citizens' interest and achievement of popular ownership of the organisation's decisions and interventions

1 Preamble, Constitutive Act of the AU.

2 Article 4(c), Constitutive Act of the AU.

3 Amani Africa, Mapping of AU Decision-Making Actors and Processes, Special Research Report No.12 (April 2023) 3 [Mapping of AU decision-making].

4 See AU, Overview of Institutional Reforms <https://au.int/AUReforms/overview> accessed 13 January 2023 & Institute for Security Studies, The Horn of Africa should improve citizen engagement, 15 May 2019, <https://issafrica.org/pscreport/psc-insights/the-horn-of-africa-should-improve-citizen-engagement> accessed 13 January 2023 [The Horn of Africa should improve citizen engagement].

5 The Horn of Africa should improve citizen engagement, as above.

in governance and peace and security in the Continent.

When the AU was launched in 2002, there was general consensus on the need to ensure that it would serve the African people and harness citizens' voices in the affairs of the organisation.⁶ The normative provisions cited above and this overall understanding meant that there was a need for providing a framework for channelling the engagement of citizens and CSOs. That same year, the AU-Civil Society Provisional Working Group (AUCSPWG) was formed with the task of developing the accreditation standards and the code of conduct for Civil Society Organizations (CSOs), and the procedures for operationalisation of the ECOSOCC. Additionally, this working group developed the ECOSOCC Statutes that were subsequently endorsed by the AU assembly, initiating steps towards making the ECOSOCC fully functional.⁷

Unlike in the past when states were the near dominant actors in the decision-making processes of international organizations as was the case during the era of AU's predecessor, the Organization of African Unity (OAU), CSOs have during the past several decades come to assume significant role not only in shaping and informing decisions of international organizations but also participating in the formulation of such decisions. CSOs continue to influence international affairs through agenda-setting, influencing international law making and governance.⁸ Additionally, they can also play direct role in the formal decision-making process, even if they are external to the formal decision-making process. 'Such is the case when these actors are assigned (formally) to undertake certain tasks to feed into the decision-making process or are formally engaged to serve as resource persons with

6 See the Report of the Chairperson of the Commission on the AU Institutional Reforms Ext/Assembly/2(XI).

7 Economic Social And Cultural Council Of The African Union (ECOSOCC), Strategic Plan, 2017-2018, Dec 2016 <https://ecosocc.au.int/en/documents/2018-02-06/strategic-plan-2017-2018>, p.14

8 Popovski, V. 'The role of civil society in global governance' 2013 UN-iLibrary.

respect to specific decision-making.⁹ Accordingly, broadly speaking CSOs play both a direct and indirect role in AU decision-making processes, although their engagement in decision-making principally is indirect.

It is important to understand that supranational/ intergovernmental institutions such as the AU are not directly accountable to citizens.¹⁰ As such, CSOs play a critical role in reinforcing the legitimacy of these institutions by filling in any accountability deficits that could otherwise undermine the impact of supranational institutions in global governance.¹¹ Equally important is the role regional and continental institutions play to influence and guide their Member States to adopt, adapt and implement continental standards that are championed by CSOs and encapsulate the aspirations of citizens. Accordingly, engagement of CSOs with regional institutions is critically important for African citizens given the significant political leverage, legitimacy and convening power continental institutions have over their Member States.

Against the background of the foregoing, this special report assesses the role of CSOs in the decision-making processes of the AU. Within the framework of the direct and indirect role of CSOs referred to above, the special report highlights the importance underpinned by the different forms of CSO engagements with AU institutions and examines the extent to which they have been effective in enhancing ownership of decisions, ensuring public legitimacy and bringing AU closer to African people. The purpose of this analysis is accordingly to provide informed analysis documenting the various ways that CSOs contribute to and shape AU decision-making. In so doing, it also aims not only to enhance the understanding of primary AU decision-making

actors on the value that CSOs bring and their receptiveness to the role of CSOs but also enable CSOs to better understand the various avenues and ways through which they can contribute to and inform AU decision-making.

II AVENUES FOR CSOS ENGAGEMENT IN AU DECISION MAKING PROCESSES

Notwithstanding the general distinction in the role of CSOs between direct and indirect roles noted above, several spaces through which CSOs represent citizens' voices, and assert democratic accountability, ownership, and public legitimacy of AU decision-making processes include formal institutional spaces, invited spaces, joint spaces and created spaces.¹² Formal institutional spaces, which are related to the direct role of CSOs in decision-making, are anchored in official structures that are entrenched within the functioning of AU organs and institutions such as their respective statutory mandates.

On the other hand, invited spaces exist based on invitations that could be extended to CSOs to participate in the activities of an AU organ or institution. Created spaces are more autonomous and involve the participation of CSOs in activities that relate to AU issues and processes either on their own accord or through collaboration. Joint spaces become manifest where CSOs organise activities in partnership and cooperation with AU organs.

2.1 Formal Institutional Spaces

The transformation of the OAU to the AU created a more favourable environment for robust engagement with non-state actors including CSOs in the processes and interventions of the AU.¹³ As

⁹ *Mapping of AU decision-making*, 28.

¹⁰ Haggart, B & Keller, CI. 'Democratic legitimacy in global platform governance' 2021 *Telecommunications Policy* Vol. 45(6).

¹¹ Tramontana, E. 'Civil society participation in international decision making: recent developments and future perspectives in indigenous rights arena' 2012 *The International Journal of Human Rights* Vol. 16(1) 173.

¹² Oxfam, 'Strengthening popular participation in the African Union: A Guide to AU Structures and Processes' 2009 Open Society for Institute Network Publication.

¹³ See Preamble of the AU Constitutive Act, see also Francis N. Ikome, *The challenges of Diaspora representation in*

earlier noted, this is established in the Constitutive Act, which constitutes the grand norm of the AU. The AU's institutional framework further creates spaces and mechanisms through which CSOs can participate in its decision-making processes. These institutional spaces are entrenched in the organs, institutions and departments of the AU in furtherance of their mandates as reflected in relevant legal instruments that warrant the establishment of such spaces allowing for participation of CSOs at various stages of decision-making. CSOs can therefore participate in decisions of the AU the various areas of its engagements including but not limited to the promotion of democratic governance and peace and security in the Continent based on clearly pre-determined rules or guidelines and modalities for their incorporation into AU's decision making. These formal institutional spaces are discussed below.

2.1.1 Civil Society Division of the AU Commission

This is an avenue established by the AU to mainstream all contributions from CSO into AU programs, policies, and principles. This division is important to the role that CSOs play in AU's decision-making processes as it is entrusted with the mandate of periodically organising workshops to enlighten CSOs on understanding the AU and its organs as well as the key structures that are essential for decision-making processes.¹⁴ The division is involved in organising sectoral dialogues such as the African Union interfaith dialogues, diaspora engagement and the AU/OATUU Trade Union Partnership forum, where CSOs can make their contributions towards influencing decision making regarding the Continent's integration and development agenda.¹⁵ There are instances in which the AU engages CSOs by assigning them particular tasks whose outcomes are to be fed in the decision-making process of the institution.¹⁶ In other instances, the AU resorts to engaging them

the African Union's ECOSOCC Assembly (2009) Centre for Policy Studies Policy Brief 55.

¹⁴ AU, *The Civil Society Division*, <https://au.int/en/civil-society-division> accessed 10 January 2023.

¹⁵ *Ibid.*

¹⁶ *Ibid.*

in specific projects to serve as resource persons essential to specific aspects of decision-making.¹⁷

2.1.2 The Economic, Social and Cultural Council

The ECOSOCC is established under Articles 5 and 22 of the AU Constitutive Act. Article 5 of the Act provides that ECOSOCC is one of the organs of the AU. Article 22 of the Act designates the ECOSOCC as 'an advisory organ composed of different social and professional groups of the Member States of the Union.' Thus, the ECOSOCC is an advisory organ of the AU whose role is centered on the engagement of the CSOs in the processes and work of the AU. This organ is at the center of ensuring that CSOs are actively engaged in AU processes by overseeing the accountability of Member States as well as the implementation of AU programs and activities in collaboration with member states.¹⁸ Unlike the Civil Society Division of the AUC whose mandate is to mainstream civil society contributions in all aspects of AU principles, policies, and programs, the ECOSOCC is an advisory organ of the Union, whose membership is limited to accredited CSOs.

Despite its advisory mandate, since 2004 when it was established, ECOSOCC has only provided two advisory opinions:

'Advisory Opinion on Peace and Security Issues of Conflict arising from Irregularities in Elections, Violent Extremism and Terrorism and the Illicit Proliferation of Small Arms and Light Weapons in Africa' and 'Advisory Opinion on Human Rights, Governance and Migration'.¹⁹ However, the opinions have not been applied or implemented by the relevant AU institutions or integrated into relevant AU policy decisions.²⁰ This obviously undermines meaningful engagement of CSOs in AU decision-making processes.²¹

¹⁷ *Ibid.*

¹⁸ *Executive Council Decision EX/CL/Dec. 869 (XXVI) of 23-27 January 2015*

¹⁹ *Tariro Sekeramayi, The AU and ECOSOCC: Reflections on Reform and Increased Civil Society Participation, Afronomics Law August 15, 2022* <https://www.afronomicslaw.org/category/analysis/au-and-ecosocc-reflections-reform-and-increased-civil-society-participation> accessed 24 September 2023.

²⁰ *Ibid.*

²¹ *Ibid.*

Recently, the Council has been pursuing the development of a harmonized mechanism and a clearer criteria through which CSOs can obtain observer and consultative status which are key for any meaningful participation of CSOs in AU activities.²² In the execution of its mandate, the ECOSOCC looks forward to bridging the gap between the AU institutions and CSOs by building the capacity of CSOs and leveraging on their expertise in the governance and prevention of conflict and management of crises in the continent.²³ This has the potential to place CSOs at a pivotal position from which they can influence the decision processes of the AU with respect to critical issues that lie at the core of decision making by the AU.

Notably, in December 2022, after continent-wide consultations, the draft framework of ECOSOCC National Chapter was validated during the 4th Permanent General Assembly of ECOSOCC held in Nairobi, Kenya.²⁴ In February 2023, the AU officially adopted the National ECOSOCC Chapters, with the aim to guide the creation of National Chapters across AU Member States.²⁵ The framework seeks to ensure strong CSO support for AU initiatives at national level, through enhancement of engagement and collaboration between ECOSOCC, the AU and CSOs.²⁶ Considering these developments, ECOSOCC has begun awareness rising and popularisation activities strategically aimed at CSOs with mandates relating to governance, democracy, and human rights. These activities seek to introduce participants to new National Chapters frameworks, enhancing greater

²² See AU, 'ECOSOCC holds high-level multi-stakeholder dialogue on CSO engagement with the African Union and the African Peace and Security Architecture' 12 October 2022 Press Release <https://au.int/en/pressreleases/20221012/ecosocc-holds-high-level-multi-stakeholder-dialogue-cso-engagement> accessed on 10 January 2023.

²³ Ibid.

²⁴ ECOSOCC, ECOSOCC formalizes the establishment of the Tanzanian ECOSOCC National Chapter 5 September 2023 <https://ecosocc.au.int/en/news/press-releases/2023-09-05/ecosocc-formalizes-establishment-tanzanian-ecosocc-national-chapter> accessed 02 December 2023.

²⁵ Ibid.

²⁶ Ibid.

awareness of Charter on Democracy, Elections, and Governance (ACDEG), and enabling engagement with AU Organs.²⁷

In August 2022, ECOSOCC established the Tanzanian ECOSOCC National Chapter.²⁸ During the awareness and popularisation workshop for the formalisation of the creation of the Tanzanian ECOSOCC Chapter various speakers emphasized the importance of ECOSOCC National Chapters to the attainment of AU objectives.²⁹

Explaining the relevance of ECOSOCC National Chapters, Tanzanian Ambassador to Ethiopia and Permanent Representative to the African Union and UNECA, Innocent Shiyu remarked, 'I am confident that the National ECOSOCC Chapters will live up to their intended purpose of serving as a framework for accountability over elected General Assembly members. The chapters will also create a close connection with national civil society through dissemination of information about the work and progress of the AU to civil society in member states, including mobilising support for and awareness of AU programmes and [Agenda 2063](#), enabling capacity building and training of civil society organisations in our member states.'

Source: ECOSOCC

Despite ECOSOCC's unique positioning as an avenue for CSOs to play an active part in AU decision making processes and contribute to implementation of AU's mandate and its agenda 2063, its capacity to realise this mandate has been limited by the organ's restrictive membership criteria.³⁰ Even though AU and its member states receive and function largely on funding that is foreign sourced, Article 6(6) of the ECOSOCC Statutes restricts ECOSOCC membership to CSOs that demonstrate that 50% of their resources are generated by members. This restrictive requirement has left majority of foreign-funded

²⁷ Ibid.

²⁸ Ibid.

²⁹ Ibid.

³⁰ Institute for Security Studies, Time for AU to hear citizens' voices, <https://issafrica.org/pscreport/psc-insights/time-for-au-to-hear-citizens-voices> accessed 13 January 2023.

CSOs and expert CSOs out of the activities of the ECOSOCC.³¹ Their exclusion from ECOSOCC impairs the potential of CSOs to contribute effectively to AU's decision-making processes.³² The formal requirements have additional disadvantage of excluding grass root and community based CSOs which may not have formal registration despite their value for their constituencies.

2.1.3 The African Commission on Human and Peoples' Rights

The African Commission on Human and Peoples' Rights (Commission) is also one of the AU organs that has both quasi legislative and judicial decision-making role in the AU. The organization of its work as articulated in its Rules of Procedure and practice is such that it avails formal role for the participation of CSOs in its decision-making processes. Pursuant to its mandate, the Commission is entrusted with making important decisions within AU structure such as reviewing state reports, adopting general comments, guidelines and resolutions, reviewing individual complaints and deciding on them, and granting or denying observer status to organisations with pending applications.³³

Through its periodic sessions, the Commission creates an institutional space that allows CSOs engagement and offers them the opportunity to contribute to its decisions on various governance and human rights issues across the Continent. As a matter of practice, the Commission convenes its ordinary sessions four times in a year. These sessions include at least two public ordinary sessions.³⁴ The sessions of the Commission with

³¹ Tariro Sekeramayi, *Op-Ed: The AU and ECOSOCC: Reflections on Reform and Increased Civil Society Participation*, 26 August 2022 <https://www.chr.up.ac.za/opinion-pieces/3096-op-ed-the-au-and-ecosocc-reflections-on-reform-and-increased-civil-society-participation> accessed 13 January 2023.

³² *Ibid.*

³³ See Article 45 of the African Charter on Human and Peoples Rights and International Justice Resource Centre 'African Human Rights System' <https://ijrcenter.org/regional/african/> accessed 8 January 2023.

³⁴ International Justice Resource Centre 'African Human Rights System' <https://ijrcenter.org/regional/african/> accessed 8 January 2023.

the public segment is one of the platforms through which CSOs play a role in participating in the public deliberations of the Commission thereby contributing directly to the decisions of the Commission on the state of human rights. This is because the CSOs remain at liberty to make statements at the session and also suggest topics on the agenda of the Commission. This avails a unique opportunity for CSOs and other defenders of human rights to influence the decisions of the Commission from agenda setting to provision of input into the decision of the Commission, which, among others, includes the adoption of resolutions.

The main areas that this institutional space offers for CSOs to participate in its decision making relate to oral statements during the public session of the Commission, submission of shadow reports, and filling of complaints. Regarding the first tool, CSOs with observer status make oral statements during the Commission's sessions without any limits on the substance or organization of the statements. The second tool, shadow reports, creates room for CSOs to submit alternative reports to inform the Commission's consideration and review of state party reports submitted under Article 62 of the African Charter.

In the same vein, CSOs can pursuant to the provisions of the African Charter submit complaints of alleged human rights violations by state parties for review by the Commission in line with its protective mandate.³⁵ Some of the key decisions made by the Commission pursuant to filling of communications by CSOs include, Social and Economic Rights Action Centre (SERAC) and Another v Nigeria (2001) AHRLR 60 (ACHPR 2001), Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya (2009) AHRLR 75 (ACHPR 2009), Constitutional Rights Project and Another v Nigeria (2000) AHRLR 191 (ACHPR 1998), Egyptian Initiative for Personal rights and Interights v Egypt (2011) AHRLR 90 (ACHPR 2011) and Lawyers for Human Rights v Swaziland (2005) AHRLR 66 (ACHPR 2005).

However, there are certain challenges that undermine participation of CSOs in the

³⁵ Article 56, African Charter; Rule 93, Rules of Procedure

institutional space created by the Commission. For instance, the participation in the Commission ordinary sessions is limited to CSOs that enjoy observer status with the Commission. This refers to the formal recognition by the commission. CSOs that have been granted observer status enjoy the privileges of presenting oral statements during the sessions, proposing additions to the session's agenda, gaining access to documents before the sessions and receiving invitations to participate in closed meeting organized the by the Commission.

Although the observer status – as a formal requirement – confers all these privileges to CSOs, it is apparent that failure to attain this status limits the extent of the impact that CSOs can have in the Commission's decision-making. In addition, there are various bureaucratic requirements preceding the conferment of the status. They include the requirement for a certificate of legal status, signed and authenticated statute of the CSO, audited financial statements, strategic plan, and annual activity reports; among other requirements.³⁶ In the absence of these prerequisites, it becomes difficult for CSOs to participate in this space of the Commission following the absence of privileges that grant them audience before the commission during its sessions.³⁷

Other formal requirements that affect the participation of CSOs in the Commission's ordinary sessions include the requirement for prior registration for the sessions (two to three weeks before the sessions), comprehension of the working languages of the Commission (English, French, Portuguese, and Arabic), submission deadlines applicable to written or oral submissions, as well as travel requirements. Even so, it is important to understand that the observer status requirement is a core avenue through which the AU either allows CSOs into its core decision-

making spaces or locks them out. Based on the prevailing requirements, it is apparent that only CSOs that occupy a higher stratum are able to gain access to this democratic accountability space. The potential impact of this implication is the locking out of smaller CSOs from the AU's decision-making space. For instance, such constraints that come with qualification for observer status lock out the valuable contributions of smaller faith-based, voluntary and grass-root CSOs from decision making in the AU. This is because they lack sufficient resources and capacity to engage at that level. As a result, such exclusion also may undermine efforts to promote social cohesion social and political conflict by the AU owing to the feeling of disconnect from the AU institutions.³⁸

2.1.4 The African Court on Human and People's Rights

Another institutional space through which the CSO may engage in judicial decision-making processes of the AU is participation in the African Court on Human and People's Rights (African Court). The African Court represents a sharp contrast with regard to the role of CSOs in decision-making processes within the AU. As opposed to the Commission, the Court does not create formal institutional space within which CSOs can participate in its decision-making processes that is separate from the judicial space in which CSOs may participate subject to certain requirements. According to the structure of its operations, the CSOs can only have direct access to the Court subject to the making of a Special Declaration by the state concerned with effect to allowing the Court to hear and determine the cases brought before it by CSOs or allow for the participation of the CSOs.³⁹ This is in addition to the requirement

³⁶ African Commission on Human and Peoples Rights, Resolution 361 on the Criteria for Granting and Enjoying Observer Status to Non-Governmental Organizations Working in the field of Human and Peoples' Rights in Africa, 59th Ordinary Session (2016).

³⁷ See International Justice Resource Center 'Civil Society Access to International Oversight Bodies: African Commission on Human and Peoples' Rights' 2018 p 9.

³⁸ Community of Democracies & Partners Global, 'The importance of ensuring an enabling environment for civil society as it relates to the Sustainable Development Goals' 2017 Working Group on Enabling and Protecting Civil Society <https://community-democracies.org/app/uploads/2016/09/Study-Enabling-Environment-and-SDGs.pdf> accessed 12 January 2023.

³⁹ East African Civil Society Organizations' Forum, 'Improving the effectiveness of the African Court on Human and People's Rights' December 19, 2016 <https://eacsof.net/EACSO/2016/12/19/improving-the-effectiveness-of-the-african->

that the Member State concerned has to ratify the Court's protocol before the CSOs from the state in question can submit or participate in complaints before the Court.⁴⁰

Existing data shows that only 10 states (Benin, Burkina Faso, Cote d'Ivoire, Gambia, Ghana, Malawi, Mali, Rwanda, Tanzania, and Tunisia) have ever entered the Special Declaration since the adoption of the Court Protocol in 1998 Court allowing for participation of CSOs in the Court's decision making processes.⁴¹ This is despite the fact that 33 AU Member States have ratified the Court's Protocol.⁴² Unfortunately, 4 States (Benin, Cote d'Ivoire, Rwanda, and Tanzania) have in recent years withdrawn the declaration meaning that CSOs from only 6 States in the Continent can submit cases to the Court.⁴³

Further to the submission of complaints before the Court, CSOs can submit a request for an advisory opinion before the African Court in line with Article 4(1) of the Court's Protocol. Under Article 4(1) African organizations recognized by the AU can submit a request for advisory opinion. Various CSOs have relied on this provision to submit requests for advisory opinions on matters relating to the African Charter and other relevant human rights instruments.⁴⁴ However, the Court has adopted a restrictive interpretation of Article 4(1) by stating that recognition by AU means recognition by AUC and not recognition by an AU organ such

[court-on-human-and-peoples-rights-afchpr/](https://www.african-court.org/cpmt/advisory-finalised) accessed 13 January 2023.

⁴⁰ Article 34(6), Protocol to the African Charter on Human and People's Rights establishing the African Court on Human and People's Rights.

⁴¹ AU, List of Countries which have Signed/Ratified/Acceded to the Protocol to the African Charter on Human and Peoples Rights on the Establishment of the African Court on Human and Peoples Rights, https://au.int/sites/default/files/treaties/36393-sl-PROTOCOL_TO_THE_AFRICAN_CHARTER_ON_HUMAN_AND_PEOPLESRIGHTS_ON_THE_ESTABLISHMENT_OF_AN_AFRICAN_COURT_ON_HUMAN_AND_PEOPLES_RIGHTS.pdf accessed 14 January 2023.

⁴² Ibid.

⁴³ Ibid.

⁴⁴ African Court, ACTHPR Cases <https://www.african-court.org/cpmt/advisory-finalised> accessed 05 July 2023.

as the African Commission on Human and Peoples Rights. This has led to rejection of certain advisory opinion requests for failure to meet the restrictive approach adopted by the Court.⁴⁵

For instance, the Centre for Human Rights, University of Pretoria submitted two requests for advisory opinion to the Court: i) *The Centre for Human Rights of the University of Pretoria and Coalition of African Lesbians (CAL)* on interpretation of Article 59(3) of the African Charter on Human and Peoples' Rights in light of the attempt by the AU Executive Council to erode the Autonomy of the African Commission, in the context of the Commission's decision to grant observer status to CAL, and the Executive Council directing the Commission to reverse its decision;⁴⁶ and ii) *The Centre for Human Rights, Federation of Women Lawyers Kenya, Women's Legal Centre, Women Advocates Research and Documentation Centre, Zimbabwe women Lawyers Association* relating to clarification of consequences of Article 6(d) of the Maputo Protocol, which states that every marriage must be 'recorded in writing and registered in accordance with national laws, in order to be legally recognised.' Both request for advisory opinion were rejected by the Court on the reasoning that the Centre's and CAL's observer status before the African Commission does not confer them the status of 'African organisations recognized by the African Union', which can only be attained through observer status or MOU with the African Union Commission (AUC).⁴⁷

Notably, as illustrated in the table below, the Court has allowed filing of amici curiae briefs by CSOs.

⁴⁵ Ibid. See specifically Request for Advisory Opinion No. 002/2015 by the Centre for Human Rights (CHR) University of Pretoria, and the Coalition of African Lesbians (CAL) & Request For Advisory Opinion by The Socio-Economic Rights and Accountability Project (SERAP) No, 001/2013 ADVISORY OPINION 26 May 2017.

⁴⁶ Request for Advisory Opinion No. 002/2015 by the Centre for Human Rights (CHR) University of Pretoria, and the Coalition of African Lesbians (CAL) Decided 28 September 2018.

⁴⁷ Request for Advisory Opinion No 001/2016 The Centre for Human Rights, Federation of Women Lawyers Kenya, Women's Legal Centre, Women Advocates Research and Documentation Centre, Zimbabwe women Lawyers Association Decided 28 September 2018.

This has enhanced the participation of CSOs in decision-making processes of the Court.⁴⁸

The Centre prepared and submitted an amicus brief in the case of *Lohe Issa Konate v Burkina Faso*, Merits, Application No. 004/2013, Decided 5 December 2014, African Court on Human and Peoples' Rights, concerning the criminalisation of defamation, decision available at. The Centre prepared and submitted an amicus brief in Request for Advisory Opinion No 001/2013: Socio-Economic Rights and Accountability Project (SERAP), concerning the competence of an NGO to bring requests for advisory opinion where the Centre submitted a joint amicus curiae brief to the African Court on Human and Peoples' Rights. The Centre prepared and submitted an amicus brief in Request No 001/2018: Pan African Lawyers Union (PALU), concerning the decriminalisation of vagrancy crimes in Africa. The Centre submitted and amicus curiae brief.

Source: Centre for Human Rights, University of Pretoria⁴⁹

2.1.5 The African Committee of Experts on the Rights and Welfare of the Child

The African Committee of Experts on the Rights and Welfare of the Child (ACERWC) provides an avenue for CSOs to take part in decisions it makes with respect to all communications it receives. Communication in this regard refers to complaints brought to the attention of the ACERWC regarding the violation of a right contained in the African Charter on the Rights and Welfare of the Child.⁵⁰ The decisions by ACERWC relate to questions on whether a state party has acted in violation of any of the provisions of the Charter and the nature of the recommendations that should follow such **communications**. As such, the tool of engagement

⁴⁸ See African Court, ACTHPR Cases <https://www.african-court.org/cpmt/advisory-finalised> accessed 05 July 2023.

⁴⁹ Centre for Human Rights, Litigation, <https://www.chr.up.ac.za/litigation-implementation-unit/30-units/litigation-and-implementation/2778-litigation> accessed 02 December 2023.

⁵⁰ Article 44, African Charter on the Rights and Welfare of the Child.

of CSOs in this regard is a formal institutional space for CSOs to submit any communications or contributions to the ACERWC with respect to communications that have been received by the ACERWC.⁵¹

This formal institutional space is specifically important as it empowers the CSOs to directly influence the decisions of the ACERWC on communications presented before it for resolution and decision making. The importance of this space is even more magnified considering that CSOs can file an amicus curiae brief for purposes of providing relevant information relating to facts, law, arguments, or evidence in a Communication.⁵² This also provides an avenue for the CSOs to inform decisions of the ACERWC.

Importantly, the ACERWC is required under Article 42(iii) of the African Children's Charter to 'cooperate with other African, international and regional institutions and organisations concerned with the promotion and protection of the rights and welfare of the child.' The framework of cooperation between the Committee and Non-Governmental Organisations (NGOs) is provided in the Committee's Rules of Procedure (sections 34, 37, 81 and 82) and the Criteria for Granting Observer Status to Non-governmental Organisations (NGOs) and Associations. By April 2023, 36 CSOs had been granted observer status by ACERWC.⁵³ Observer status allows CSOs to participate in ordinary and extraordinary sessions of the Committee, closed or private meetings of the Committee, and meetings or events organised by the Committee during the inter-session period, including events organised during country visits.

⁵¹ ACERWC, 'Guidelines for consideration of communications and monitoring implementation of decisions' <https://www.acerwc.africa/en/page/guidelines-consideration-communications-and-monitoring-implementation-decisions> accessed 9 January 2023.

⁵² ACERWC, Revised Guidelines for Consideration of Communications and Monitoring Implementation of Decisions by the African Committee of Experts on the Rights and Welfare of the Child.

⁵³ ACERWC, CSOs, <https://www.acerwc.africa/en/networks/csos?page=0> accessed 30 November 2023.

In line with its promotional mandate the ACERWC provides an opportunity in the state reporting process for CSOs to prepare and present shadow reports or alternative information. This process is established in the table below:⁵⁴

The committee's Rules of Procedure (Rule 69) allows the ACERWC to receive civil society reports from CSOs. Reports by civil society not only contain factual information but also usually contain expert advice based on the areas of specialisation of the organisations involved. The preparation and submission of a civil society report does not in any way preclude CSOs from actively participating in the national process spearheaded by the government for the preparation of state reports, if such a process is in place. Where CSOs are not able to contribute to the state reporting process, it becomes even more important to prepare civil society reports which bring to the fore key issues that may have been missed from the state report.

2.2 Invited Spaces

Unlike institutional spaces, invited spaces are not anchored on the institutional frameworks of the AU. Rather, this mechanism of engagement depends on extension of invitations by AU institutions to CSOs to participate in or attend AU activities. The extension of such invitation may be based either on relevant legal or policy provisions envisaging such invitation or in the absence of such provision best practice of the decision-making actor or platform. As such, they also depend on the extent to which an AU institution finds the contributions of specific CSOs to be relevant to the activities or the mandate that the AU institution is implementing at the time. The following part looks into some of the invited spaces established by AU organs and institutions.

⁵⁴ Julia Sloth, *Advancing Children's Rights: A civil society guide on how to engage with the African Committee of Experts on the Rights and Welfare of the Child (2018) Save the Children and Plan International.*

2.2.1 African Union Summits

AU Summits provide an important avenue for adoption of key decisions, treaties, protocols, and policies by the AU. Since 2004, the AU ordinary summits have usually been held twice every year (January/February and June/July) until January 2017 when, in light of the AU reforms, the AU Heads of State and Government made the decision Assembly/AU/Dec. 635(XXVIII) that instead of June/July Summit, the Bureau of the African Union Assembly to hold a coordination meeting with the RECs, with the participation of the Chairpersons of the Regional Economic Communities (RECs), the AUC and Regional Mechanisms (RMs).

The AU ordinary summits bring together the key decision-making bodies of the AU, the AU Assembly of Heads of State and Government, Executive Council, and the Permanent Representatives Committee (PRC). The PRC meets first, followed by the Executive Council, and then the AU Assembly of Heads of State and Government. According to Article 21 of the AU Constitutive Act the PRC is responsible for the preparation of the work of the Executive Council and acting on the Executive Council's instructions. Accordingly, the PRC may establish sub-committees or working groups as it may find necessary.⁵⁵ As per Article 10 of the AU Constitutive Act, the Executive Council is composed of Ministers of Foreign Affairs or such other Ministers or Authorities as are designated by the Governments of Member States. However, in practice and in conformity with Rule 18(1), the Executive is made up of Ministers of Foreign Affairs.

In line with Article 13 of the Constitutive Act, the Executive Council is charged with the responsibility to coordinate and take decisions on policies of common interest to AU Member States in areas such as: foreign trade; energy, industry and mineral resources; food, agriculture and animal resources, livestock production and forestry; water resources and irrigation; environmental protection, humanitarian action and disaster response and relief; transport and communications; insurance; education, culture, health and human resources development; science and technology; nationality,

⁵⁵ *Mapping of AU decision-making processes, 16-18.*

residency and immigration matters; social security, including the formulation of mother and child care policies, as well as policies relating to the disabled and the handicapped; and the establishment of a system of African awards, medals and prizes. The Executive Council also receives reports from several AU bodies that report to it including the Special Technical Committees or report to it following delegated authority from the AU Assembly and takes decision on the same.

In line with Article 6 of the Constitutive Act, the AU Assembly is composed of Heads of States and Government or their duly accredited representatives. The AU Assembly is the supreme organ of the AU. Thus, it is at the apex of AU decision-making actors.⁵⁶ The AU Assembly as provided under Article 9 has a broad range of powers in areas that include determining common policies of the AU, establishing of AU organs, budget approval, appointment of leadership of AU organs, and oversight over affairs of the AU.

Considering these three organs of the AU have meetings during AU Summits, the AU Summits provide an important avenue for CSOs engagement. To attend the Summits, CSOs have required accreditation as observers through making a request to AUC's Citizens and Diaspora Directorate (CIDO). The observer status at a Summit does not provide speaking rights, or even the right to attend beyond the opening and closing ceremonies of the Executive Council and AU assembly sessions.⁵⁷ However, the possibility of lobbying has been available in the corridors of the meeting venue.⁵⁸ The PRC and Executive Council meetings may yield better fruits than at AU Assembly level, by which decisions are already made or are at hands of the Heads of State and Governments only.⁵⁹

The other and more indirect avenue for CSOs engagement during the summit is via the official representation of ECOSSOC, as a CSOs

membership body, during the various sessions of the AU summit. Even here, ECOSSOC does not play an active role in decisions of the summit other than in respect to matters that concern its activities and the report that it presents during the summit.

Despite the importance of the avenue provided by the AU Summits for CSOs engagement increasingly, the space for CSOs in the Summits has been restricted. This is elaborated in the excerpt in the box below:⁶⁰

African CSOs did not sit idle until the creation of an enabling environment for their engagement, but they have been organizing themselves to carve out space for themselves. The first decade of the establishment of the AU from about 2002 to 2010 witnessed a dynamic and robust era of CSOs' engagement where they were organized to the point of convening pre-AU Summit meetings and issuing their view in good time to the Union before the Summit. They were organized enough to also participate in the margins and corridors of the Summit as Observers during the opening sessions of the Executive Council and even during the Assembly of Heads of State and Government. That space has been restricted since recently as the Summit was no place for CSOs but for them to stay in their 'lane', at technical expert level.

Source: Tim Murithi, Head of program, Institute for Justice and Reconciliation.

The restriction of CSOs and citizens' space in AU Summits is seen as contradictory to AU's vision of a people driven Continent as articulated under Agenda 2063.⁶¹ The restriction of the space for

⁶⁰ Tim Murithi, *AU's Network of think tanks for peace: an avenue for bringing the AU closer to the wider African public?* Amani Africa 12 June 2023 <https://amani-africa-et.org/bus-network-of-think-tanks-for-peace-an-avenue-for-bringing-the-au-closer-to-the-wider-african-public/> accessed 03 December 2023.

⁶¹ The African Women's Development and Communications Network, *Civil Society Joint Memoranda to the African Union Heads of State and Government Meeting at the 35th Ordinary Session of the African Union Assembly, 18 February 2022* <https://femnet.org/2022/02/civil-society-joint-memoranda-to-the-african-union-heads-of-state-and-government-meeting->

⁵⁶ As above, 11-13.

⁵⁷ Oxfam, *'Strengthening popular participation in the African Union (n 8 above) p49.*

⁵⁸ Ibid.

⁵⁹ Ibid.

CSO and citizen engagement undermines the achievement of the aspiration for 'an integrated, prosperous and peaceful Africa, driven by its own citizens.'⁶²

2.2.2 Pan African Parliament

The Pan African Parliament (PAP) was created in 2004 as an AU advisory and consultative body in line with Article 5 of the Constitutive Act. As noted in the preamble of the Protocol to the Treaty Establishing the African Economic Community Relating to the PAP, the creation of PAP is 'informed by a vision to provide a common platform for African peoples and their grassroots organisations to be more involved in discussions and decision-making on the problems and challenges facing the Continent.' Thus, PAP is one of the key institutions through which AU can harness citizen voices.

While PAP is an important institution through which CSOs can voice African citizens' concerns to inform AU decision-making processes, PAP does not have a structured CSO engagement strategy or process. Currently, CSOs engage with PAP when they are invited during sessions and committee deliberations.⁶³ However, PAP is keen to create relationships and increase engagement with CSOs in its decision-making processes.⁶⁴ For instance, in May 2019, the PAP CSO Forum was established to ensure closer collaboration between CSOs on PAP-related issues, and between PAP and CSOs.⁶⁵ In May 2023, during of the Parliamentary Dialogue between PAP and PAP CSOs forum on the occasion of the Second Ordinary Session of PAP, a recommendation was made to formalise and enhance CSO engagement with PAP.⁶⁶

[at-the-35th-ordinary-session-of-the-african-union-assembly/](#) 15 January 2023.

62 Ibid.

63 PAP, Civil Society Organisations, <https://pap.au.int/en/civil-society-organizations> accessed 17 January 2023.

64 ISS, Time for AU to hear citizens' voices, <https://issafrica.org/pscreport/psc-insights/time-for-au-to-hear-citizens-voices> accessed 13 January 2023.

65 Centre for Human Rights, About the Pan African Parliament Civil Society Forum <https://www.chr.up.ac.za/dce-unit-projects/pap-cso-forum> accessed 05 July 2023

66 Ibid.

Providing room for PAP's strategic engagement with CSOs is a precondition for CSOs to effectively contribute to AU decision-making processes and to enhance democratic governance in the Continent.⁶⁷ The excerpt in the box below elaborates this position.

CSOs play a vital role in promoting democratic values and human rights, as well as fostering civic participation. It was evidentthat a strong civil society is a fundamental building block for a vibrant and well-functioning democracy. Most importantly, civil society is not just a partner for governments, but a watchdog as well. It is within this context that it becomes crucial for an organ such as the PAP to continue to engage with CSOs to ensure that its mandates are fulfilled. Additionally, the PAP is a steppingstone for CSO visibility and agency in the decision-making process. At a time, where the civic space is shrinking, democratic values are being threatened and human rights neglected – the PAP and CSO relationship is pertinent for democratic consolidation. Therefore, the African Union and the Pan-African Parliament project towards a reformed and integrated Africa is only plausible if it embraced civil society as the building block between African citizens and government.

Source: Centre for Human Rights, University of Pretoria.⁶⁸

2.2.3 AU Commission on International Law

The African Commission on International Law (AUCIL) represents a potential invited space through which CSOs can participate in decision-making within the AU as it relates to the mandate

⁶⁷ ISS, Time for AU to hear citizens' voices, <https://issafrica.org/pscreport/psc-insights/time-for-au-to-hear-citizens-voices> accessed 13 January 2023.

⁶⁸ Centre for Human Rights, West African Chapter: Civil Society Engagement on the workings of the Pan African Parliament 28 July 2023 [https://www.chr.up.ac.za/latest-news/3518-west-african-chapter-civil-society-engagement-on-the-workings-of-the-pan-african-parliament#~:text=The%20Pan%2DAfrican%20Parliament%20\(PAP,the%20PAP%20to%20work%20together](https://www.chr.up.ac.za/latest-news/3518-west-african-chapter-civil-society-engagement-on-the-workings-of-the-pan-african-parliament#~:text=The%20Pan%2DAfrican%20Parliament%20(PAP,the%20PAP%20to%20work%20together) accessed 01 December 2023.

of the AUCIL. The AUCIL is a Commission that was established in line with Article 5(2) of the AU Constitutive Act and Article 2 of the Statute of African Commission on International Law. The AUCIL under Article 4 of its Statute has an objective to 'undertake activities relating to codification and progressive development of international law in the African continent with particular attention to the laws of the Union as embodied in the treaties of the Union.' In addition, it has an objective 'to assist in the revision of existing treaties, assist in the identification of areas in which new treaties are required and prepare drafts thereof.'⁶⁹

Part of the powers conferred to the AUCIL is the ability to broaden its consultation base through cooperation with other organizations.⁷⁰ As such, this represents a potential invited space through which CSOs may participate in decision making processes of the AUCIL as an AU institution.⁷¹ Even though this mechanism is yet to be fully explored, it represents a space through which CSOs can be invited to contribute to AU's decisions related to the development of international law.

Currently, the Commission is made up of 10 members from different African Countries.⁷² In its latest session held in 2022.⁷³ The session entailed a deliberation on issues afflicting the development of international law in African such as ongoing legal studies on political, economic and social issues in Africa such as the convention against slavery, the prohibition on intervention in international, the development of an African convention on

judicial cooperation and mutual assistance among others.⁷⁴ However, part of the observations that were made by the chairperson of the Commission was based on the concern that the AUCIL was not visible as a consultative body within the AU.⁷⁵ This is based on the concern by the chair person that political bodies have not been active in submitting as many issues as they can for legal advice from the Commission.⁷⁶ However, this concern can be addressed by expanding the scope within which the Commission operates and makes decisions to welcome the participation of CSOs. This could be achieved by – in addition to inviting political bodies to make their submissions – inviting CSOs to table current issues that the Commission should offer legal advice on, especially with respect to matters that currently afflict the Continent.

2.2.4 Africa Peer Review Mechanism

The African Peer Review Mechanism (APRM) provides another invited space through which CSOs participate in decision making by the AU. The nature of operation of the APRM is such that it creates a space over which CSOs can contribute to the systematic assessment and review of governance to promote political stability and economic development at the Head of State peer level.⁷⁷ In its Strategic Plan 2020-2024, the APRM considers the participation and engagement of CSOs in the APRM process as an important factor in attainment of its mandate.⁷⁸

Despite being a self-monitoring tool, the APRM establishes a space where CSOs can participate in evaluating the extent to which Member States adhere to the principles of democracy and political governance, economic governance and management, corporate governance as well as broad-based sustainable socio-economic

⁶⁹ Article 4 of the Statute of African Commission on International Law.

⁷⁰ Article 25(1), Statute of the African Union Commission on International Law.

⁷¹ Ibid.

⁷² 'Members of the African Union Commission on International Law' February 08, 2017. Retrieved from: <https://au.int/en/documents/20170208/members-african-union-commission-international-law>

⁷³ AU, 'The 20th ordinary session of the African Union Commission on International Law Opens' March 22, 2022 <https://au.int/en/pressreleases/20220322/20th-ordinary-session-african-union-commission-international-law#~:text=The%20Commission%27s%20main%20tasks%20is,the%20laws%20of%20the%20AU> 14 January 2023.

⁷⁴ Ibid.

⁷⁵ Ibid.

⁷⁶ Ibid.

⁷⁷ AU, Africa Peer Review Mechanism' <https://au.int/en/organs/aprm> accessed 10 January 2023.

⁷⁸ Ejigayhu Tefera, APRM in a Nutshell: SADC, CSOs and the African Peer Review Mechanism, 26 February 2021 <https://saija.org.za/wp-content/uploads/2021/02/Ejigayhu-APRM-Zimbabwe-CSO-Sensitisation-26.02.2021.pdf> accessed 24 September 2023.

development.⁷⁹ At national level, Member States involve CSO in their governing bodies.⁸⁰ For instance, Kenya, Rwanda, Ghana, Algeria, Mauritius, and South Africa have included CSOs in their governing bodies.⁸¹ Within the APRM process CSOs use various strategies including advocacy, petitioning, and lobbying.⁸² CSOs engage in the APRM process by providing submissions, reports, research on challenges facing democracy and governance, and proposing reforms to representatives of national governing councils.⁸³ Before reviews, CSOs enhance accountability in the implementation of governance frameworks by taking part in APRM reviews and implementation of National Plans of Actions.⁸⁴

Just like any other AU stakeholders, CSOs are often invited to participate in the self-assessment. Hence, at the consultation stage of the peer review, the CSOs are provided with APR Self-Assessment Questionnaires to record their input. The country under review reduces the input collected into a draft paper that reflects the issues that affect the nation followed by comprehensive National Program of Action detailing clear steps and deadlines.⁸⁵ This invited space affords CSOs to influence decisions by Member states that build up towards fostering policies, standards and practices that would lead to more political stability, sustainable development and continental integration.⁸⁶ After reviews by APRM, CSOs take part in advocacy and communication efforts on popularization of the review reports findings and follow up on the implementation of recommendations.⁸⁷

2.2.5 Economic, Social and Cultural Council Annual CSO Meeting

Another mechanism through which the AU has created invited spaces to facilitate participation of CSOs in AU decision making has been through annual meetings organized by the ECOSOCC. This represents a forum where the ECOSOCC invites CSOs, including those that may not be its members, to share their experiences and lessons in governance, environment, migration, peace, and security interventions within the continent.⁸⁸ By using the forum to assess the continent's progress with regard to these interventions, the CSOs make a direct contribution to governance and peace and security efforts taken by AU organs as well as Regional Economic Communities. Even so, just like the other invited spaces discussed in this part, it is apparent that there is a need to improve the status of the mechanisms of engagement that feature in this part to encourage more fruitful participation by CSOs.

The mechanisms of engagement that feature in this part almost resemble institutional spaces but do not strictly fall within institutional spaces. This therefore demonstrates the room that exists to elevate the mechanisms of engagement that feature in AUs invited spaces by institutionalising them and cementing their place in AU instruments and mainstreaming them in AU organs, institutions, and departments. For instance, if institutionalised, the space created by the ECOSOCC annual meetings would be more solid to the extent that would impose a stronger obligation

79 AU, Africa Peer Review Mechanism' <https://au.int/en/organs/aprm> accessed 10 January 2023.

80 Ross Herbert and Steven Gruzd, *The African Peer Review Mechanism: Lessons from the Pioneers* (2017) The South African Institute of International Affairs p9.

81 *Ibid.*

82 Ejigayhu Tefera, *APRM in a Nutshell* (note 78 above).

83 *Ibid.*

84 *Ibid.*

85 *Ibid.*

86 *Ibid.*

87 *Ibid.*

88 AU, 'ECOSOCC convenes annual CSO meeting on the state of peace and security in Africa: Sharing experiences and lessons learned' November 24, 2022 <https://au.int/en/pressreleases/20221124/ecosocc-convenes-annual-cso-meeting-state-peace-and-security-africa-sharing> accessed 8 January 2023. See also AU, ECOSOCC holds inaugural media sensitisation forum on the Free Movement Protocol and 3rd FMP Forum, 01 December 2022 <https://au.int/en/pressreleases/20221201/ecosocc-holds-inaugural-media-sensitisation-forum-free-movement-protocol-and> accessed 13 January 2022 & AU, AU-ECOSOCC Commits to Engage African CSOs for a Sustainable and Waste-Free Africa, 30 January 2021 <https://au.int/fr/node/39913> accessed 16 January 2023.

on the Council with clear guidelines on the manner in which many CSOs can have the opportunity to meaningfully participate in the meetings. This can also contribute to mitigating the impact of the restrictive membership requirement for CSOs to join ECOSSOC.

2.2.6 Peace and Security Council

The Peace and Security Council (PSC) is established under Article 2 of the Protocol to the Establishment of the Peace and Security Council of the African Union. The PSC is created as a 'standing decision-making organ for the prevention, management and resolution of conflicts' in the Continent. Article 20 of the PSC Protocol the PSC 'shall encourage non-governmental organizations, community-based and other civil society organizations, particularly women's organizations, to participate actively in the efforts aimed at promoting peace, security and stability in Africa. When required, such organizations may be *invited* to address the Peace and Security Council.'

In addition, Article 8 of the PSC Protocol allows the PSC to invite for informal consultation any international organisation or civil society organisation involved and/or interested in a conflict or a situation under its consideration as may be needed for the discharge of PSC mandate. The Manual on the PSC Working Methods contemplates that: 'In line with Rule 21 and 22 of the PSC Rules of Procedure, the PSC invites CSOs, which have an observer status to the AU, to its open sessions to make contributions to its deliberations on various thematic issues related to the PSC mandate. During such open session of the PSC, invited CSOs provide key/lead speakers or presenters.'⁸⁹

In addition to the legal basis established in the PSC Protocol, the framework for engagement between the PSC and organizations within the CSO sector is also defined by the Livingstone Formula from December 2008. This formula was crafted in accordance with the recommendations of the PSC's inaugural retreat, the Dakar Retreat of 2007, which had called for the establishment of a

mechanism to oversee the relationship between the PSC and CSOs. The Maseru Conclusions of 2014, which focus on enhancing the implementation of the Livingstone Formula for collaboration between the PSC and CSOs, also constitute a significant component of the framework governing PSC-CSO engagement.⁹⁰

In line with the Peace and Security Council (PSC) Protocol, the Livingstone Formula and the Maseru Conclusions, through this invited space, CSOs can support the PSC to effectively discharge its mandate. This is because in addition to their expertise, CSOs are close to the grassroots levels where peace and security challenges manifest. In September 2022, the PSC and CSOs convened their inaugural consultative meeting, virtually, in Addis Ababa Ethiopia.⁹¹ The meeting provided a renewed opportunity to regularize engagement between PSC and CSOs with the aim to promote peace and security in the Continent.⁹² It was also decided that Accra Forum⁹³ would be institutionalised as a yearly event of the AUC with the participation of the PSC and CSOs. It will provide a platform for further engagements between the PSC and CSOs.⁹⁴ The second consultative meeting was held on 6 July 2023. These consultative meetings are designed to serve as a platform for the reflection of non-state perspectives and provision of feedback on the policy actions of not just the AU but also Regional Economic Communities and Regional Mechanisms (RECs/RMs) on various peace and security issues.⁹⁵

90 Amani Africa, 'Second Annual Consultative Meeting between the PSC and Representatives of CSOs and ECOSSOC', 6 July 2023, <https://amani-africa-et.org/second-annual-consultative-meeting-between-the-psc-and-representatives-of-csos-and-ecosoc/>

91 AU Peace and Security Council, *Inaugural Consultative Meeting Between the Peace and Security Council of the African Union and Civil Society Organizations*, 14 September 2022 Addis Ababa, Ethiopia.

92 *Ibid.*

93 AU Reflection Forum on Unconstitutional Changes of Government (UCGs) in Africa.

94 AU Peace and Security Council, *Inaugural Consultative Meeting Between the Peace and Security Council of the African Union and Civil Society Organizations*, 14 September 2022 Addis Ababa, Ethiopia.

95 Amani Africa, 'Monthly Digest on the African Union

89 See Manual on the PSC Working Methods para. 79.

Some organizations have established niche by servicing the research and technical support as well as policy dialogue needs of the PSC and AU's peace and security and democratic governance roles broadly. In this respect, one organization that stands out for its dedicated work on the PSC and AU's broader peace and security and democratic work is Amani Africa. It has established dedicated work streams including its research products such as *Insights on the PSC*,⁹⁶ *Monthly Digest of the PSC*⁹⁷ and the *PSC Handbook*⁹⁸ and its technical support work backstopping the monthly chairperson of the PSC.

2.2.7 African Governance Architecture

Conscious of the governance challenges facing the Continent, the AU sought to promote the internalisation and implementation of its shared values and to create a link between its governance institutions and Regional Economic Communities by establishing the African Governance Architecture (AGA) in 2011. The AGA is inspired by AU Constitutive Act that outlines the AU's determination to 'promote and protect human and people's rights, consolidate democratic institutions and culture and ensure good governance and the rule of law'.⁹⁹ The AGA operates through conducting consultative meetings and for a on particular subjects which are convened at the AU level.

In 2014, the AGA Secretariat created new opportunities for citizen engagement, including by developing engagement standards and mobilisation of CSOs, women, and youth to ensure meaningful engagement in democratic governance processes and agenda in Africa.¹⁰⁰ **Annually, AGA convenes the High-Level Dialogue**

Peace and Security Council July 2023, p. 1 https://amaniAfrica-et.org/wp-content/uploads/2023/08/July_monthly-Digest-2023.pdf

96 <https://amaniAfrica-et.org/insights-on-the-psc/>

97 <https://amaniAfrica-et.org/monthly-digest-on-the-aupsc/>

98 <https://amaniAfrica-et.org/aupsc-handbook/>

99 AGA, About, <https://au.int/en/aga> accessed 13 January 2023

100 *Ibid.*

to enhance dialogue on the AU's democratic governance and human rights agenda as guided by the AUC. Non-state actors including CSOs are invited to take part in the High-Level Dialogues.¹⁰¹ Through this space, CSOs make their contributions which inform AU decision-making process relating to governance and democracy in Africa.

Under the Department of Political Affairs, Peace and Security (PAPS) which was created after the decision to merge the Department of Political Affairs and the Department of Peace and Security, in line with AU Reforms, there is an opportunity for increased CSOs invitations to take part in AGA and Africa Peace and Security Architecture (APSA) activities. This will be critical in ensuring that AU decisions benefit from CSOs expertise in both governance and peace and security processes. The potential to exploit this opportunity was underscored in July 2023 during a coordination meeting convened by PAPS and ECOSOCC to strengthen civil society engagement with European Union Africa Peace and Security Architecture IV (EU APSA IV) program.¹⁰² The excerpt in the box below captures some of the sentiments during the meeting.

101 Faten Aggad and Philomena Apiko: *Understanding the African Union and its Governance Agenda: African Governance Architecture and the Charter for Democracy Elections and Good Governance (2017)* European Center for Development Policy Management.

102 ECOSOCC, *ECOSOCC and AU PAPS, Convene Coordination Meeting to Strengthen Civil Society Engagement in EU APSA IV*. 09 July 2023 <https://ecosocc-au.int/en/news/press-releases/2023-07-09/ecosocc-and-au-paps-convene-coordination-meeting-strengthen-civil> accessed 03 December 2023.

Ambassador Salah Hammad, Head of the AGA/APSA Secretariat, emphasised the indispensable role played by CSOs in shaping and implementing peace and security initiatives, considering their valuable insights and connections with local communities. He acknowledged the challenges faced by CSOs and highlighted the opportunity provided by the EU APSA IV program to reinforce CSO capacities and empower them to actively contribute to the implementation of the APSA and emphasised the importance of their expertise and recommendations in shaping future actions.

Source: PAPS and ECOSOCC

2.2.8 African Court on Human and Peoples' Rights

In addition, the Court has taken positive effort towards modifying the institutional space it creates for the engagement of CSOs in its decision-making processes. This has been evidenced by participation of civil society organization in the African judicial dialogue that the Court convenes,¹⁰³ and the Court's sensitization missions. The judicial dialogue seeks to enhance efficiency of judiciaries and access to justice in the Continent.¹⁰⁴ The dialogue draws participants from national judiciaries, academia, media, and CSOs across the Continent.¹⁰⁵

The sensitization mission represents the creation of an invited space that the Court uses to improve its institutional space within which CSOs should be able to participate in its decision-making processes. The Court has resorted to carrying out sensitization missions across the continent with the aim of encouraging states to ratify its protocol and deposit Special Declarations with

¹⁰³ See the African Court, Fifth Judicial Dialogue Theme: *Building Trust in African Judiciaries, United Republic of Tanzania, Dar Es-Salaam 4-5 November 2021 & African Court, Final Report on Third African Judicial Dialogue "Improving Judicial Efficiency In Africa" 9 – 11 November, 2017 Arusha, Tanzania.*

¹⁰⁴ *Ibid.*

¹⁰⁵ *Ibid.*

the Court.¹⁰⁶ This is based on the anticipation that by raising awareness of the role of the Court, then states will act accordingly and effectively improve the institutional space within which CSOs across the continent can participate in the Court. The successes of the sensitization missions have been apparent following the positive steps taken by Benin and Tunisia to deposit their Special Declarations in 2015 and 2017 respectively;¹⁰⁷ with effect to allowing individuals and CSOs from the two Country's to participate in the Court's decision-making processes. However, a more effective intervention would require legislative amendments to remove the requirement for states to deposit a Special Declaration with the Court to allow the participation of CSOs.

2.3 Joint Spaces

Joint spaces usually entail the organization of joint activities with AU organs and institutions. This section outlines some of the joint engagements between CSOs and AU organs and institutions.

2.3.1 The Forum for Participation of NGOs in the Ordinary Sessions of the African Commission on Human and Peoples' Rights

The NGOs Forum also known as the Forum on the Participation of NGOs in the Ordinary Sessions of the African Commission on Human and People's Rights, depicts a joint space that elevates the role of CSOs in participating in decision making in the AU. The forum exists in form of a joint advocacy platform through which the African Commission and the African Center for Democracy and Human Rights Studies coordinate to facilitate lobbying, and advocacy by CSOs towards protecting human rights in Africa.

¹⁰⁶ Steenhard, R. 'The African Court on Human and People's Rights: Reflections on Recent Progress' Peace Palace Librar 21 March 2018.

¹⁰⁷ International Justice Resource Sector, *Tunisia Allows Individuals and NGOs Direct Access to African Court* <https://ijrcenter.org/2017/04/26/tunisia-allows-individuals-and-ngos-direct-access-to-african-court/> accessed 15 January 2023.

The platform brings together a community of African and international CSOs to review the human rights situation in Africa, identify relevant interventions, and adopt strategies geared towards promoting and protecting human rights in Africa.¹⁰⁸ For instance, before the 73rd Ordinary Session of the African Commission which was held between 20 October 2022 and 9 November 2022, the NGO Forum was held on 17 and 18 October 2022 to address prevailing human rights challenges in the Africa.¹⁰⁹ The thematic areas of the forum related to:¹¹⁰ i) the situation of human rights and democracy in Africa; ii) conflicts particularly resurgence of terrorism and violent extremism in Somalia, Burkina Faso, Mozambique, Nigeria, and DR Congo; iii) The Africa Continental Free Trade Agreement; iv) Digital rights and security; v) climate change, Covid-19 and Gender; vi) Networking for Human Rights in Africa.

As such the Forum represents a scaled space for collaboration among CSOs that participate in proposing topics for panel discussions, the review of investigative reports and the forwarding of recommendations from the engagement to the African Commission. These recommendations, therefore, act as the contribution of the African civil societies to the African Commission's ordinary sessions.¹¹¹ As such, it is expected that such recommendations contribute to decision making by the Commission in its processes.

¹⁰⁸ The African Center for Democracy and Human Rights Studies, 'Forum on the Participation of NGOs in the Ordinary Sessions of the African Commission on Human and Peoples' Rights (African Commission)' <https://www.acdhhs.org/ngo-forum/> accessed 10 January 2023.

¹⁰⁹ International Service for Human Rights, African Commission: Alert to NGO Forum and 73rd ordinary session, 27 September 2022 <https://ishr.ch/latest-updates/african-commission-alert-to-ngo-forum-and-73rd-ordinary-session/> accessed 25 September 2023.

¹¹⁰ Ibid.

¹¹¹ The African Center for Democracy and Human Rights Studies, 'Forum on the Participation of NGOs in the Ordinary Sessions of the African Commission on Human and Peoples' Rights (African Commission)' <https://www.acdhhs.org/ngo-forum/> accessed 10 January 2023.

2.3.2 Civil Society Organisations Forum on the African Charter on the Rights and Welfare of the Child

Civil Society Organisations Forum on the African Charter on the Rights and Welfare of the Child is a joint forum that collaborates and cooperates with the African Committee of Experts on the Rights and Welfare of the Children to improve the promotion and protection child rights across the African Continent.¹¹² The CSO Forum brings together CSOs from across the Continent of Africa to offer them an opportunity to engage with child right mechanisms under the African Children's Charter and to engage on issues directly with ACERWC members who attend the CSO Forum.¹¹³

This joint space provides a space for CSOs specialising on children rights to take part in AU decision making process. For instance, on the 14th CSO Forum which took place between 15 to 17 March, 2019 in Addis Ababa, Ethiopia addressed various child-related matters including school related gender based violence, child marriage, child trafficking, rights of children within refugee setting, and nurturing care for early childhood development.¹¹⁴ The CSO Forum recorded attendance by 113 participants drawn from National Human Rights Institutions, CSOs from all the 5 regions, Regional and International child focused organisations.¹¹⁵

2.3.3 Department of Political Affairs, Peace and Security (PAPS) and African Union Network of Think Tanks for Peace (NeTT4Peace)

In February 2023, PAPS launched the African Union Network of Think Tanks for Peace (NeTT4Peace) in Addis Ababa, Ethiopia. The

¹¹² Report of the Fourteenth CSO Forum on the African Charter on the Rights and Welfare of the Child 15th – 17th March 2019 Addis Ababa, Ethiopia.

¹¹³ Ibid.

¹¹⁴ Ibid.

¹¹⁵ Ibid.

creation of this network is a culmination of efforts by CSOs to actively participate in the AU policy space, particularly through engagement with PAPS.¹¹⁶ On this understanding, a coalition of CSOs convened the first strategic retreat with PAPS in February 2022 in Nairobi informed by the purpose to improve collaboration and synergy between PAPS and CSOs to contribute to peace, security, and governance issues in Africa.¹¹⁷

The NeTT4Peace seeks to ensure strategic long-term collaboration between think tanks focusing on peace, security, and development in Africa and PAPS.¹¹⁸ The collaboration between NeTT4Peace and PAPS will thus ensure that PAP draws benefits from the research, advocacy, and advisory work from think tanks while offering a critical platform for research to inform policy development.¹¹⁹ The think tanks/organisations that participated in the launch are outlined in the box below:

Think tanks/organisations present during the launch of NeTT4Peace.

African Centre for the Constructive Resolution of Disputes (ACCORD), Amani Africa Media and Research Services, Cairo International Center for Conflict Resolution, Peacekeeping & Peacebuilding (CCCCPA), The Policy Center for the New South (PCNS), The Institute for Security Studies (ISS), Institute for Peace and Security Studies (IPSS), The Kofi Annan International Peacekeeping Training Centre (KAIPTC), Nigerian Institute of International Affairs (NIIA), IPAR-Rwanda, West Africa Network for Peacebuilding (WANEP), Nkafu Policy Institute, Institut Interculturel pour la paix dans la Région des Grands Lacs (Pole Institute), Centre de Recherche en Économie Appliquée pour le Développement (CREAD), Centre for Policy Research AFRIA (CPRA) and Groupe d'Etudes sur les Conflits la Sécurité Humaine.

Source: PAPS.

¹¹⁶ Tim Muriithi, *AU's Network of think tanks for peace* (n 62 above).

¹¹⁷ *Ibid.*

¹¹⁸ ACCORD, *Strategy group meeting – Network of Think Tanks for Peace*, 20 February 2023 <https://www.accord.org.za/news/strategy-group-meeting-network-of-think-tanks-for-peace/> accessed 03 December 2023.

¹¹⁹ *Ibid.*

2.4 Created Spaces

CSOs also influence decision-making in the AU by implementing programs with activities that are related to AU issues and processes. These would include advocacy projects that have the effect of shaping the policy debate and discourse that have the effect of shaping policy debates and in the long run influencing the decisions of the AU.¹²⁰ Owing to the nature of such created spaces, the CSOs do not maintain so much control regarding the influence their activities would have in AU's decision-making processes. This is considering the autonomous nature of these created spaces, and taking into account that they initially originate from the CSOs themselves.

Certain CSOs have been actively engaged in highlighting activities of the AU in peace and security, constitutional rule and democratic governance and human rights.¹²¹ Apart from longstanding institutions such as the Institute for Security Studies (ISS), ACCORD and Institute for Peace and Security Studies (IPSS), a major recent addition to the AU policy-making ecosystem is Amani Africa Media and Research Services. Apart from its research and technical support works, its policy forums, often organized jointly with various actors, along with those organized by ISS and IPSS, have become key created spaces in Addis Ababa for informing policy discourse and thinking on current AU policy affairs.¹²² It has carved out a credible space in knowledge production and provision of technical support making it trusted technical partner of the members of the PSC and the AU Political Affairs, Peace and Security Department. The IPSS engages in the convening of the Tana Security Forum, a premier peace and security forum that attracts high-level participation

¹²⁰ Amani Africa, *'Mapping of AU Decision making Actors and Processes.'* 2022 Special Research Report P. 28

¹²¹ Sue Mbaya, *African Union–civil society relations Lessons for strengthening ties*, Institute for Security Studies: Monograph 208, June 2023 <https://issafrica.s3.amazonaws.com/site/uploads/mono-208.pdf> accessed 25 September 2023.

¹²² Amani Africa Media and Research Services <https://amaniafrica-et.org/> accessed 25 September 2023 & Institute for Security Studies, <https://issafrica.org/> accessed 25 September 2023.

from state and non-state actors. The Africa Union Watch engages in monitoring the AU's compliance with its norms.¹²³

Organizations such as ISS and Amani Africa also work on the convening of policy forums before and after the AU summit to facilitate understanding on major policy issues surrounding the AU summit. Apart from the collaborative events that are organized on the AU summit, the Amani Africa Training Institute on the AU¹²⁴ has become a useful platform for providing space for CSOs representatives, particularly those not based in Addis Ababa, both in enhancing their understanding of the AU and in having direct engagement and establishing networks with AU policy makers.

III CONCLUSION AND RECOMMENDATIONS

The AU decision-making process, although primarily inter-governmental in nature, envisages and affirms the participation of citizens. While they are not part of the formal decision-making processes of the AU, the foregoing analysis clearly highlights the critical role that CSOs increasingly play in AU decision-making. CSOs constitute a key part of the wider AU decision-making ecosystem. Their research, policy forums and advocacy work of CSOs not only serves as catalyst both for agenda setting and identification of various options in the policy making process but also in providing technical resources that are directly used in AU decision-making or help inform and influence decision-making. Apart from the role of CSOs between direct and indirect roles, the avenues through which CSOs represent citizens' voices, and assert democratic accountability, ownership, and public legitimacy of AU decision-making processes include formal institutional spaces, invited spaces, joint spaces, created spaces.

CSOs are involved in AU decision-making processes in different ways and at various levels. In joint

spaces, they engage in areas of shared interests in collaborative discussions and implementation of agreed issues. In created spaces CSOs conduct various activities such as research, awareness raising, and monitoring of implementation of AU decisions. Through invited spaces CSOs find opportunities to reflect and dialogue on critical issues that AU institutions seek to address. Through formal institutional spaces, CSOs inform AU decision-making in line with clearly defined rules and guidelines.

However, despite the existence of these spaces of engagement, it is still critical to reflect on both how to increase the level of CSOs engagement and to make the engagement more effective in supporting AU decision-making processes. This is necessary considering the evolving context of international and continental governance. Based on the foregoing, the following recommendations can improve the engagement of CSOs with AU organs and institutions:

AU Organs and Institutions

- i. Address the legislative constraints on participation of CSOs in AU decision making processes especially in formal institutional spaces. This could be done by among other ways through amendment or revision of legal frameworks that limit or restrictive engagement of CSOs in decision making processes of AU organs and institutions. For instance, the AU should revise the Statutes of ECOSOCC and consider alternative approaches that allow ECOSOCC membership to be more accessible, representative, independent, and legitimately owned by African CSOs. This should be aimed at ensuring proactive participation of CSOs in AU decision-making processes. Also, the AU should find ways to address the limitation presented by the restrictive requirement under African Court Protocol on filing of cases before the Court by CSOs.
- ii. At the technical level, AU organs and institutions should work towards enhancing involvement of CSOs in their decision-making processes through coordination, joint planning, technical expert consultations,

¹²³ Africa Union Watch <https://www.au-watch.org/> accessed 25 September 2023.

¹²⁴ <https://omaniafrica-et.org/training-institute/>

implementation, evaluation, and capacity building. Providing opportunities for CSOs at these technical levels will be benefit AU decision making because they can assist in nuancing and contextualization of issues, policies and frameworks.

- iii. Institutionalise various activities undertaken in the invited spaces of CSO participation in AU decision making processes. This is likely to enhance effective engagement between CSOs and AU organs and institutions.
- iv. Increase engagement with CSOs within created spaces. This particularly useful when it comes to CSOs that have cut a niche in thematic areas that fall within the mandate of various AU institutions. Through involvement in briefings, dialogues, retreats and roundtables organised by CSOs, AU institutions can improve their decision-making based on the quality of research and output of CSOs in such spaces.

CSOs

- v. Make a deliberate and conscious effort to improve their understanding and appreciation of the AU policy making spaces. This should include capacity training, research knowledge sharing and exchanges with other CSOs and actors that have engaged and continue to engage AU organs and institutions on various issues. Such capacity includes on the organs and actors to target and engage for specific thematic and sectoral issues, timing, resources, contacts, networks as well as the nature and mandate of the various AU organs and institutions. It may also entail attending and facilitating tailor made training and capacity enhancement opportunities including exchange programs with institutions that engage with the AU.
- vi. Participate in policy making processes and forums, even as observers in person and virtually. This is critically important since the language and means of engagement differ as elaborated in the previous sections de-

pending on the AU organ or institution and as such requires developing skills sets and an appreciation of opportunities, limitations and how to engage. While in person engagement may be resource intensive, post COVID 19, many of these engagements have adapted and adopted virtual tools, which would be a good start.

- vii. Align and contribute to annual thematic and sectoral focus issues of the AU- which are always set a year in advance. Such contribution can be via data analysis, research, policy briefs, and submissions to relevant policy organs and institutions. This includes developing a niche area and thematic expertise that contributes to new and innovative ideas, agendas and initiatives. Several of these contributions need not be targeted at the AU as such but to the general populace and even at Member States levels – and if relevant these are likely to be picked up and sought after by the technical specialists and researchers at the AU and policy forums seeking to influence and contribute to the policy at continental and global levels. Actors such as Amani Africa, Institute for Security Studies, Centre for the Study of Violence and Reconciliation have developed such expertise and would be useful actors to seek guidance and support in this regard.
- viii. Support, encourage and ensure the participation of small and local CSOs in AU decision-making processes by creating proportional thresholds for this category of CSOs. This for instance may be done with respect to acquiring capacities such as observer status with the AU organs and institutions.
- ix. Strategic partners are called upon to support CSOs to play a role and contribute to AU policy making processes. Such partners include private sector foundations on the continent as well as bilateral and multi-lateral actors bodies. Partnership, collaboration and coordination of these engagements has the greats potential to

yield significant impact on how citizens interphase and contribute to policy issues that impact upon and affect them.



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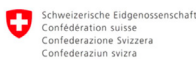
ABOUT AMANI AFRICA

Amani Africa is an independent African based policy research, training and consulting think tank with a specialization and primary focus on African multilateral policy processes, particularly those relating to the African union.

We support the pan-African dream of peaceful, prosperous and integrated Africa through research, training, strategic communications, technical advisory services, and convening and facilitation.

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